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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 ANN TOMKINS as Personal
9 Representative of the ESTATE OF
10 FLORENCE TOMKINS, a Washington
11 Resident,

12 Plaintiff,

13 v.

14 RELIASTAR LIFE INSURANCE
15 COMPANY, a Minnesota corporation,

16 Defendant.

C18-1488 TSZ

MINUTE ORDER

17 The following Minute Order is made by direction of the Court, the Honorable
18 Thomas S. Zilly, United States District Judge:

19 (1) Plaintiff's Motion for Reconsideration, docket no. 53, is DENIED. Plaintiff
20 urges the Court to reconsider its ruling granting Defendant's Motion for Summary
21 Judgment with prejudice. Reconsideration is appropriate "in the face of the existence of
22 new evidence, an intervening change in the law, or as necessary to prevent manifest
23 injustice." *Navajo Nation v. Norris*, 331 F.3d 1041, 1046 (9th Cir. 2003). "Whether or
not to grant reconsideration is committed to the sound discretion of the court." *Id.*
Plaintiff asserts that reconsideration is appropriate because, in making its ruling, the
Court relied on inaccurate assertions that Defendant made for the first time at oral
argument that "Reliastar for the first time took the position that it had never
acknowledged that it actually owed the Estate of Florence Tomkins the remaining
\$11,259.49 FPA balance." Motion for Reconsideration, docket no. 53 at 3. The Court
did not rely on these arguments because the statute of limitations began to run long
before the correspondence in 2015 occurred. Plaintiff asserts that Reliastar may have

1 owed Plaintiff a final supplementary annuity contract using funds in the FPA which were
2 alleged to be \$11,259.49 in 2003. In support of the Motion to Reconsider, Plaintiff
3 presents financial records showing that Reliastar may not have made this final payment.
4 Ex. 1 to Chambers Decl. (docket no. 45-1 at 1). Plaintiff also alleges that, according to
5 its terms, the FPA still has not terminated because Reliastar never purchased the final
6 supplementary annuity in 2003. By disputing the date of the FPA's termination, Plaintiff
7 argues that her claims could not run until June 2013 at the earliest and in the alternate,
8 that the FPA "still has not terminated." Plaintiff's Motion for Reconsideration, docket
9 no. 53 at 5-6. However, the accrual date of Plaintiff's breach of contract claim is
unrelated to the FPA's termination date. As the Court previously ruled, a breach of
contract action accrues upon breach. *1000 Virginia Ltd. P'ship v. Vertecs Corp.*, 158
Wash. 2d 566, 576 (2006) (en banc). As the Court noted in the oral ruling, in 1992, the
insurance company sent a statement, Exhibit C to the Leigh Declaration, docket no. 35,
that put Ms. Berg on notice that interest was paid at less than 12 percent per year. The
statute of limitations began to run at that time. In the alternative, at the very latest, the
statute of limitation began to run on April 5, 2005, the date that the FPA terminated.

10 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
record.

11 Dated this 6th day of January, 2020.

12 William M. McCool
13 Clerk

14 s/Karen Dews
15 Deputy Clerk